



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FILED

07-17-07

03:39 PM

Application of California-American Water Company (U 210W) to Decrease Revenues For Water Service in its Coronado District by (\$73,100) or (0.46%) in 2008 and Increase Revenues by \$266,200 or 1.67% in 2009 and \$260,900 or 1.61% in 2010

A.07-01-036

Application of California-American Water Company (U 210 W) to Increase Revenues for Water Service in its Larkfield District by \$1,272,000 or 61.91% in 2008, \$134,300 or 3.94% in 2009 and \$129,900 or 3.67% in 2010 Under the Current Rate Design or Decrease Revenues by (\$742,200) or (36,12% in 2008 and Increase Revenues by \$50,000 or 3.72% in 2009 and \$63,500 or 4.55% in 2010 Under the Proposed Rate Design.

A.07-01-037

Application of California-American Water Company (U 210 W) to increase Revenues for Water service in its Sacramento District by \$8,966,900 or 33.89% in 2008, \$1,905,700 or 5.36% in 2009 and \$1,860,700 or 4.97% in 2010 Under the Current Rate Design or by \$10,981,000 or 41.50% in 2008, \$1,925,900 or 5.11% in 2009, and \$1,845,600 or 4.66% in 2010 Under the Proposed Rate Design.

A.07-01-038

Application of California-American Water Company (U 210 W) to Increase Revenues for Water Service in its Village District by \$1,537,300 or 7.43% in 2008, \$243,400 or 1.08% in 2009, and \$232,900 or 1.02% in 2010.

A.07-01-039

**REPLY OF THE
MARK WEST AREA COMMUNITY SERVICES COMMITTEE
TO THE
CALIFORNIA-AMERICAN WATER COMPANY'S
MOTION TO STRIKE THE OPENEING BRIEF OF
THE MARK WEST AREA COMMUNITY SERVICES COMMITTEE**

James M. Boulter
Mark West area community Services Committee
133 Eton Court
Santa Rosa, CA. 95403
(707) 546-3097
[JBoulter@COMCAST.NET](mailto:JBoulter@comcast.net)

July 17, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of California-American Water Company (U 210W) to Decrease Revenues For Water Service in its Coronado District by (\$73,100) or (0.46%) in 2008 and Increase Revenues by \$266,200 or 1.67% in 2009 and \$260,900 or 1.61% in 2010	A.07-01-036
Application of California-American Water Company (U 210 W) to Increase Revenues for Water Service in its Larkfield District by \$1,272,000 or 61.91% in 2008, \$134,300 or 3.94% in 2009 and \$129,900 or 3.67% in 2010 Under the Current Rate Design or Decrease Revenues by (\$742,200) or (36,12% in 2008 and Increase Revenues by \$50,000 or 3.72% in 2009 and \$63,500 or 4.55% in 2010 Under the Proposed Rate Design.	A.07-01-037
Application of California-American Water Company (U 210 W) to increase Revenues for Water service in its Sacramento District by \$8,966,900 or 33.89% in 2008, \$1,905,700 or 5.36% in 2009 and \$1,860,700 or 4.97% in 2010 Under the Current Rate Design or by \$10,981,000 or 41.50% in 2008, \$1,925,900 or 5.11% in 2009, and \$1,845,600 or 4.66% in 2010 Under the Proposed Rate Design.	A.07-01-038
Application of California-American Water Company (U 210 W) to Increase Revenues for Water Service in its Village District by \$1,537,300 or 7.43% in 2008, \$243,400 or 1.08% in 2009, and \$232,900 or 1.02% in 2010.	A.07-01-039

**REPLY OF THE
MARK WEST AREA COMMUNITY SERVICES COMMITTEE
TO THE
CALIFORNIA-AMERICAN WATER COMPANY'S
MOTION TO STRIKE THE OPENEING BRIEF OF
THE MARK WEST AREA COMMUNITY SERVICES COMMITTEE**

I. INTRODUCTION

Pursuant to Rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commision ("Commission"). Mark West Area Community Services Committee, ("MWACSC") hereby submits this reply to the California American water Company's ("Cal-Am") motion to strike the Opening Brief of MWACSC. This reply is being filed concurrently with MWACSC's Motion to Strike The Testimony of Thomas Glover in the above referenced proceeding.

Cal-Am's Motion to Strike the Opening Brief of MWACSC is itself replete with false statements, accusations, exaggerations and general gobbledygook and should be ignored by the Administrative Law Judge and by the Commission.

It is obvious that Cal-Am, its advisors and its attorneys wish to suppress the truth in this rate case by silencing the MWACSC.

II. MWACSC WITNESS QUALIFICATIONS

Cal-Am states that the Commission should strike MWACSC's Expert Opinions because MWACSC's witness is a non expert who is not qualified to offer expert advice.

MWACSC's witness has not held himself out to be "Expert" on any subject. Qualifications for MWACSC's witness James Boulter were established in the Response of The Mark West Area Community Services Committee to California-American Water Company's Motion to Strike the Testimony of the MarkWest Area Community Services Committee.

Qualifications of James Boulter show that he is a Licensed Civil Engineer in the State of California.¹ As such he is legally entitled to engage in the practice of Civil Engineering as that term is defined in Section 6731 of the California Business and Professions Code.

As defined in said Section 6731, Water Supply is one of the studies or activities embraced by the practice of Civil Engineering.

III. CAL-AM CLAIMS THAT MWACSC PARTICIPATED IN "NUMEROUS" SETTLEMENT NEGOTIATIONS.

In its Motion to strike the Opening Brief of MWACSC, Cal-Am claims that representatives for California American Water, DRA and MWACSC have met on numerous occasions for settlement negotiations.² (Emphasis Added). That statement is false and a gross exaggeration of the facts.

¹ Qualifications of James M. Boulter, Attachment to Response of The Mark West Area Community Services Committee to California American water Company's Motion to Strike the Testimony of the Mark West area Community Services Committee.

² California American Water Company's Motion to Strike the Opening Brief of the Mark West Area Community Services Committee, page 5.

If DRA and Cal-Am engaged in “numerous” settlement negotiations, MWACSC was not included. MWACSC was systematically excluded from any substantive settlement negotiations.

MWACSC did attend a “Meet and Confer” session on April 24, 2007 at the Commission’s office at 505 Van Ness Avenue, San Francisco ten days before DRA and Intervenor testimony was due. That meeting was also a full month before the scheduled beginning of Settlement Negotiations as stated in the Scoping Memo issued by the assigned Commissioner and the Administrative Law Judge on April 11, 2007.

The April 24 meeting was not a meeting in which any settlement negotiations took place. It was more of a statement of position by the parties. It was also characterized by subtle probing by Cal-Am’s attorneys as to the contents of MWACSC’s testimony.

It appears that subsequent meetings were held between DRA and Cal-Am but MWACSC was excluded from those settlement negotiations by not being informed of the date, time and place of such meetings.

Committee member James Boulter was called by telephone on the afternoon of Friday June 8 by Sarah Leeper, Attorney for Cal-Am, to inquire about availability of MWACSC for a meeting on Monday June 11, 2007. Since Ms. Leeper never called back to confirm the meeting, or to give time and location, MWACSC was not present at that meeting.

James Boulter was called again on the morning of June 11 and asked if he would participate in a telephone conference, to which he agreed.

Again, no negotiations took place. This was more in the order of an informational conference. Cal-Am’s attorneys outlined the areas in which DRA and Cal-Am had reached agreement by which time the Settlement Agreement between DRA and Cal-Am was already an accomplished fact.

IV. SETTLEMENT NEGOTIATIONS FOR RATE CASE A.04-04-041

With reference to settlement negotiations for rate case A.04-04-041 Cal-Am states “Additionally, MWACSC’s attempt to introduce information discussed during negotiations in the prior settlement negotiations regarding the North Wikiup Tank No. 2 is wholly improper.”³

The statement regarding the North Wikiup Tank No. 2 in MWACSC’s Opening Brief is a factual statement of one item that was not discussed (in settlement negotiations or in any other forum) and reveals nothing of the subjects that were discussed in the settlement negotiations.

Cal-Am is being very duplicitous in their complaint about revealing the contents of settlement discussions in Rate Case A.04-04-041.

Despite the fact that Rule 12.5 of the Commission’s Rules of Practice and Procedure states that “Commission’s adoption of a settlement is binding on all parties to the proceeding in which the settlement is proposed.” Cal-Am at page 8 of their Motion to strike the Opening Brief of the MWACSC Cal-Am states that “Additionally, the settlement agreement adopted in the prior general rate case (A.04-04-040, A.04-04-041, A.04-08-013), which the parties voluntarily accepted, has no relevance in this proceeding and is not binding upon the Commission in this proceeding”⁴

Thus, while arguing, on the one hand, that the settlement agreement does not endure beyond the rate case in which it is adopted, they argue on the other hand that the confidentiality of the settlement negotiations endures forever.

³ Ibid. page 6

⁴ Ibid. page 8

V. CAL-AM CLAIMS THAT MWACSC ATTEMPTS TO INTRODUCE INFORMATION THAT IS NOT A PART OF THE REDCORD

A. Quality of Homes in Larkfield

Cal-Am cites as an example MWACSC's statement concerning the type and quality of construction of homes in Larkfield.⁵ Cal-Am's motives for objecting to this statement are not clear except that it disrupts their practice of concealment.

MWACSC's description of Larkfield falls under the provisions of Section 452, Permissive Judicial Notice, of the California Evidence Code, specifically to paragraph (h) thereof.

Cal-Am does business in Larkfield, maintains an office and employees in Larkfield and therefore has ready access to the same information provided in MWACSC's Opening Brief.

B. Water Purchased From SCWA

Cal-Am requests the Judge to strike the MWACSC statement in its Opening Brief that the water purchased from the Sonoma County Water Agency is treated water and does not pass through the treatment plant. Cal-Am claims that this information is not a part of the record and should be stricken.

Again, Cal-Am's statement is false. The information is contained in the testimony by Cal-Am's own witness Mr. Andrew Soule'.

In the Project Needs Identification for Investment Project 05610501, Larkfield Arsenic Project, Mr. Andrew Soule' states that "The LWTP plant also provides disinfection, while the water from the SCWA already contains a chlorine residual prior to discharge into the lower pressure zone of the Larkfield District's distribution system."⁶ Mr. Soule' also describes the existing treatment plant as having two greensand pressure filters capable of treating a total of up to 1,200 gpm (1.73) mgd.⁷

⁵ Ibid page 5

⁶ Exhibit 9, Exhibit E. to the Final Application, Vol. 2 of 2, tab Q, Investment Project 05610501, Larkfield –Arsenic Project, Approval Documents, 1. Project Needs Identification, page 2 of 3

⁷ Ibid.

Similar information is contained in the Preliminary Engineering Feasibility Study by Coastland Engineering which states “The main pressure zone is the Larkfield Zone, which is pressurized by the North Wikiup and Lower Wikiup tanks. The treatment plant and the SCWA aqueduct feed this zone.”⁸

This same document describes the treatment facility as having two 600 gpm multimedia pressure filters capable of treating up to a total of 1,200 gpm.⁹

Cal-Am is desirous of concealing the amount of water to be treated and the capacity of the treatment plant in order to justify needless expansion of the treatment plant. MWACSC’s statement that the water purchased from the SCWA is treated water and does not pass through the treatment plant is a true statement and is supported by evidence in the record.

VI. CAL-AM CLAIMS THAT MWACSC ADDRESSES ISSUES THAT ARE OUTSIDE THE SCOPE OR ARE IRRELEVANT

Cal-Am complains on page 8 of their Motion to Strike that MWACSC addressed issues that have already been determined to be outside the scope or are no longer relevant to the proceeding. Again that is a false statement.

A. Well No. 6

Cal-Am cites as an example MWACSC’s mention of Well No. 6 in its Opening Brief. Apparently it is their contention that mention of Well No. 6 in any context is forbidden.

Obviously that is not the case. In his Supplemental testimony, Mr. Rodney L. Jordan stated that the costs already incurred for Well No. 6 would be considered in a future rate case if Cal-Am moves forward with the Well No. 6 project.¹⁰

⁸ Exhibit 34, Exhibit B. to the testimony of MWACSC, Preliminary Engineering Feasibility Study by Coastland Engineering, page 14, Distribution Facilities.

⁹ Ibid. page 13, Also table 4

¹⁰ Exhibit 15, Supplemental Testimony of Rodney L. Jordan, page 5, Q14, A14

Also in his Direct Testimony Mr. Thomas Glover testified that Cal-am would delay Well No. 6 until the additional supply is required.¹¹

In each case Well No. 6 is mentioned as potentially being introduced in a future rate case. That is exactly the context in which Well No. 6 was mentioned in the Opening Brief of the MWACSC and not in conjunction with this rate case.

B. MWACSC's Conservation efforts

Cal-Am States that MWACSC's discussion of its conservation efforts in the previous rate case should be stricken because the settlement agreement adopted in that rate case has no relevance in this rate case.¹²

Again, Cal-Am attempts to change the context of the statement. The discussion in MWACSC's Opening Brief had the purpose of illustrating the committee's commitment to conservation. In the previous rate case the Committee, of its own volition, initiated the current Larkfield Conservation Program. Cal-Am's motives for wishing to strike that historical fact are unclear.

C. Lori Anne Dolqueist's Letter of August 2005

Cal-Am also seeks to exclude the Letter from Lori Anne Dolqueist summarizing outstanding "Will Serve" letters dated August 2005 as being outdated and irrelevant.¹³

That letter lists "Will Serve" letters for the Faught Road Development and for the Airport Blvd. Development.¹⁴ As far as can be determined, and which has not been disputed, those "Will Serve" letters are still the outstanding "Will Serve" letters for those two developments. Therefore they remain relevant and their listing in the August 2005 letter remains relevant.

¹¹ Exhibit 14, Direct Testimony of Thomas Glover, page 7, Q11, A11

¹² Cal-Am's Motion to Strike the Opening Brief of MWACSC Filed July 3, 2006 page 8

¹³ Ibid

¹⁴ Exhibit 33, Exhibit E to the Testimony of the MWACSC, Letter from Lori Anne Dolqueist summarizing "Will Serve Letters" dated August 12, 2005, Items 6 and 7.

VII. MWACSC'S CONCLUSIONS REGARDING THE EFFECTS OF CONSERVATION ON THE WATER SUPPLY DEFICIT

Cal-Am states that MWACSC's Opening Brief also contains a number of conclusions regarding the effects of conservation on the water supply deficit in the Larkfield District that amount to nothing more than speculation that is unsupported by any record evidence.¹⁵

That statement is completely false. Ample evidence of the effects of conservation on the water supply deficit are contained in the Annual and Overall Water savings Analysis provided by Cal-Am in response to MWACSC's data request and reprinted in MWACSC's Testimony.¹⁶

Cal-Am apparently now wishes disavow or ignore evidence that it has presented in response to data requests.

No speculation is required, and none is involved, in reading that document and comparing it to the water supply deficit calculations contained in Thomas Glover's Rebuttal Testimony.¹⁷

Such comparison proves that the water supply deficit can be significantly reduced or eliminated through conservation.

VIII. CAL-AM CLAIMS THAT MWACSC'S CONCERNS ABOUT THE NORTH WIKIUP TNK NO. 2 ARE NOT SUPPORTED BY FACTUAL EVIDENCE AND ARE HIGHLY SPECULATIVE.

Cal-Am claims that MWACSC's opening brief contains numerous "expert opinions" on topics MWACSC's witness is not qualified to offer "expert advice"

As noted before MWACSC's witness has not claimed to be an "Expert" on any subject.

¹⁵ Cal-Am's Motion to Strike the Opening Brief of MWACSC Filed July 3, 2006 page 9

¹⁶ Exhibit 32, Testimony of MWACSC page 17

¹⁷ Exhibit 17, Rebuttal Testimony of Thomas Glover pages 16 - 25

MWACSC's witness is a Licensed Civil Engineer in the State of California and, as such, is legally entitled to engage in the practice of Civil Engineering as that term is defined in Section 6731 of the California Business and Professions Code.

No expertise is required to read portions of the Geotechnical Report and other documents related to the tank and determine that the experts who compiled the documents have misgivings about the safety of the tank.

Some examples of this are:

- 1. "Based upon our discussions with Cal Am and RBF consulting, it is our understanding that Cal Am understands the risks that may be present at this site due to its very close proximity to the Rogers Creek fault, and the potential for up to two meters of horizontal ground movement. However Cal Am is willing to accept the risks of severe foundation and tank damage should major seismic shaking or horizontal ground movement occur beneath the tank."¹⁸**
- 2. "24. Please note, per item 3, no additional geologic study has been undertaken to determine the precise location of the Rogers Creek fault. Therefore, there is the potential for up to two meters of horizontal ground displacement which could occur beneath the proposed tank foundation."¹⁹**
- 3. "Although performing a complete geological hazards analysis was not a part of our scope of services, we feel it is prudent to point out that the water tank site nearly abuts the active trace of the Healdsburg fault, which in essence is the northern termini of the Rogers Creek fault, a major strike-slip capable of up to two meters of horizontal movement according to recent researchers."²⁰**
- 4. "Utilizing the aforementioned report to assess the surface fault ground rupture hazard and risk is problematic, partly because of the legibility of the logs, but mostly because the standard of care for fault investigations and our understanding**

¹⁸ Exhibit 33, Exhibit C to the testimony of MWACSC Geotechnical Investigation and Seismic Shaking Hazards Analysis for Wikiup Water Tank Project, Santa Rosa, CA. By Pacific Crest Engineering, Inc. page 6 and page 8

¹⁹ Ibid. FOUNDATION – SPREAD FOOTINGS, item 24 page 12

²⁰ Ibid, Zinn Geology Letter dated February 3, 2006, page 1 and Conclusions page 15

of fault rupture and secondary effects (warping and secondary cracking) has increased dramatically over the last two decades”²¹

- 5. “California American Water has a full understanding of the risks that may be present at this project site due to its close proximity to an active fault, and is willing to accept the risks of severe foundation and tank damage to the existing and proposed tanks.”²²**

Cal-Am’s Engineers and Geologists appear to be distancing themselves from the decision to construct the tank on the chosen site. Repeatedly, the statement is made that “Cal-Am has a full understanding of the risks that may be present at this project site due to its close proximity to an active fault and is willing to accept the risks....”²³

These repeated warnings of the risks involved in constructing the tank at the chosen site are sufficient to raise grave concerns in the minds of anyone, whether expert or lay person. They should not be ignored as Cal-Am is apparently willing to do and is asking the Commission to do.

The MWACSC observations about the North Wikiup Tank No. 2 were made after consultation with Mr. Peter J. Lescure who is also a Licensed Civil engineer in the State of California, DBA Lescure Engineers. Mr. Lescure is also a member of the MWACSC.

MWACSC is only asking that the Commission issue an Order Instituting Investigation so that the Commission can determine for itself if the tank is safe as constructed and as claimed by Cal-Am

²¹ Ibid. Zinn Geology Letter page 3, referring to the Harding Lawson report used by Cal-Am to determine that the fault did not underlie the tank site.

²² Exhibit 17, Exhibit F to the Rebuttal Testimony of Thomas Glover, Final Basis of Design Report, California American Water, Wikiup Tank No. 2, Larkfield Service area, by RBF Consulting, Section 3.0, Tank Alternatives, Tank Foundation (unnumbered pages)

²³ Refer to footnotes 17 through 21 above

**IX. CAL-AM CLAIMS THAT MWACSC’S OPENING BRIEF CONSISTS OF
OPINION, SPECULATION AND CONJECTURE.**

Cal-Am fires off scattergun charges about nearly everything in MWACSC’s opening Brief with such statements as: “Notably missing from the opening Brief are references to evidence supporting MWACSC’s opinion.”²⁴

In fact, there are fifty (50) footnote references in MWACSC’s Opening Brief detailing the location of the evidence in the record.

It is baffling as to why Cal-Am would take umbrage to a statement that begins with “We do not oppose...”²⁵ since it indicates tacit agreement. This is another example of Cal-Am’s attorneys engaging in inappropriate legalistic nitpicking.

Cal-Am complains about the statement “We do not believe the safety of this tank and particularly the safety of residences below the tank have been given due consideration by California American Water.”²⁶

We have every right to be skeptical about the safety of the tank and to express our skepticism, especially considering the statements by Cal-Am’s own Engineers and Geologists as shown in section VIII, above. The Commission, too, should be skeptical about the safety of the tank until it has been proven to be safe by investigation of the facts.

CONCLUSION

California American Water Company and its army of attorneys have unleashed a smear campaign against the Mark West Area Community Services Committee with inflammatory, accusatory and unfounded statements. It is clear that Cal-am, its advisors and its attorneys wish to conceal certain facts in this proceeding.

One example of this is their move to strike MWACSC’s statement that “the water purchased from the Sonoma county Water Agency is treated water and does not pass through the treatment plant.”²⁷ Their motives for concealing that information are clear.

²⁴ Cal-Am’s Motion the Strike the Opening Brief of MWACSC, page 9

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid. page 5

The amount of water pumped from the wells and needing treatment does not justify expansion of the treatment plant.

The Judge and the Commission should take special note of the concealment, the exaggerations, the false statements and the misleading statements and should admonish Cal-Am and its attorneys that they are bound by the terms of Rule 1.1, Ethics, of the Commission's rules of practice and procedure.

Cal-Am's Motion to Strike is replete with accusations, exaggerations and above all false statements.

The Mark West area Community Services Committee requests the Administrative Law Judge to set aside and ignore Cal-Am's Motion to Strike the Opening Brief of MWACSC.

Respectfully Submitted

/S/ JAMES M. BOULER
James M. Boulter
Member: Mark West area Community Services Committee

CERTIFICATE OF SERVICE

I hereby certify that I have this day, July 17, 2007, served the within

**REPLY OF THE
MARK WEST AREA COMMUNITY SERVICES COMMITTEE
TO THE
CALIFORNIA-AMERICAN WATER COMPANY'S
MOTION TO STRIKE THE OPENING BRIEF OF
THE MARK WEST AREA COMMUNITY SERVICES COMMITTEE**

on the interested parties in this action by transmitting this document electronically from my home at 133 Eton Court, Santa Rosa, California 95403 to the electronic e-mail addresses listed on the attached service list.

In addition to the e-mail service list I have filed the above document, in PDF/A format, electronically, by transmitting the same to the Docket Office of the California Public Utilities Commission at [HTTP://EFILE.CPUC.CA.GOV](http://efile.cpuc.ca.gov) .

I hereby certify that the original, signed copy, of the above document is available for review and copying at the request of the Commission or any party.

Executed at Santa Rosa, California, July 17, 2007

**/S/ JAMES M. BOULER
James M. Boulter**

SERVICE LIST

LRR@CPUC.CA.GOV
MPO@CPUC.CA.GOV
JRC@CPUC.CA.GOV
FLC@CPUC.CA.GOV
LWEISS@STEEFEL.COM
LDOELQUEIST@STEEFEL.COM
SLEEPER@STEEFEL.COM
DSTEPHEN@AMWATER.COM
DARLENE.CLARK@AMWATER.COM
KTURNER@CALAMWATER.COM
DEMORSE@OMSOFT.COM
JBOULER@COMCAST.NET
PLESCURE@LESCURE-ENGINEERS.COM
MARKWEST@MARKWEST.ORG
JSPURGIN@TOAKS.ORG